



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 5, 1962

Honorable Bradley C. Miles
County Attorney
Abilene, Texas

Opinion No. WW-1270

Re: Whether a school board trustee is in contravention of Article 373, Vernon's Penal Code, or guilty of official misconduct under any statutes relative to school trustees, by virtue of the stated facts.

Dear Mr. Miles:

You have asked this office for an official opinion as to whether a school board trustee would be in contravention of Article 373 of the Penal Code or guilty of official misconduct under any statutes relating to a school board trustee, in being an executive or a member of an insurance firm which acts as agent for a corporation which issues payment and performance bonds for general construction contractors who regularly bid on and submit proposals for the construction of school buildings to be built by such school district, when such bids are always accepted by the school board on a "low bid" basis.

Article 373 of the Penal Code does not provide a basis for criminal prosecution of an independent school district board trustee who has become involved in school contracts in his private capacity, for the reason that such article applies "to any officer of any county or of any city or town." However, any contracts so entered into are void, being in violation of public policy and the particular trustee is subject to removal proceedings on the basis of his official misconduct. Articles 5970, 5973, V.C.S. Meyers v. Walker, 276 S.W.305 (Civ.App.1925). The question therefore involved in your request is whether an insurance firm which acts for a corporation which issues such payment and performance bonds outlined in your request has made a contract with the school district. We believe the answer to this question to be no.

The contract for the construction of school buildings is between the school district and the contractor. The payment bond and the performance bond is between the contractor

Hon. Bradley C. Miles, page 2 (WW-1270)

and the surety company. The school district has no authority to require a contractor to enter into bond contracts with any particular surety company.

Under the facts outlined above, the prospective trustee would not be in violation of Article 373 of the Penal Code nor guilty of any official misconduct as defined in Articles 5970 and 5973, Vernon's Civil Statutes, if he wrote payment or performance bond contracts for contractors who did business with the school district.

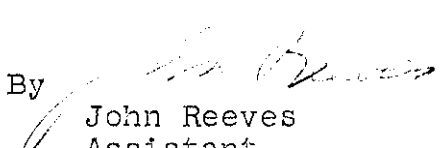
S U M M A R Y

A school board trustee who is also an executive or a member of an insurance firm which acts as agent for a corporation which issues payment and performance bonds for general construction contractors who regularly bid on and submit proposals for the construction of school buildings to be built by such school district is not in violation of Article 373, Vernon's Penal Code nor is he guilty of any official misconduct when he writes payment or performance bonds for a contractor with the school district.

Yours very truly,

WILL WILSON
Attorney General of Texas

By


John Reeves
Assistant

JR:ms

Hon. Bradley C. Miles, page 3 (WW-1270)

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman

Norman V. Suarez

Henry Braswell

J. C. Davis

REVIEWED FOR THE ATTORNEY GENERAL

By: Houghton Brownlee, Jr.